

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs November 7, 2003

**In re C.R.B. and A.L.B.**

**Appeal from the Juvenile Court for Robertson County**  
**No. D17234     Max D. Fagan, Judge**

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**No. M2003-00345-COA-R3-JV - Filed November 13, 2003**

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This appeal involves the termination of the parental rights of the mother of two children under the age of six. The mother is a chronic substance abuser who voluntarily surrendered custody of her children to another family in 1999. The Tennessee Department of Children's Services removed the children from this family in 2000 and established a parenting plan designed to reunify the mother with her children. In September 2001, the Department filed a petition in the Juvenile Court for Robertson County seeking to terminate the parental rights of the mother and the fathers of the two children. Following a trial in October 2002, the juvenile court entered an order on December 30, 2002, terminating the parental rights of all parents. Only the mother has appealed. We have determined that the December 30, 2003 order does not comply with Tenn. Code Ann. § 36-1-113(k) (Supp. 2003) and, therefore, that the case must be remanded for the preparation of findings of fact and conclusions of law as required by *In re D.L.B.*, \_\_\_ S.W.3d \_\_\_, \_\_\_ (Tenn. 2003).

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Vacated and Remanded**

WILLIAM C. KOCH, JR., P.J., M.S., delivered the opinion of the court, in which WILLIAM B. CAIN and FRANK G. CLEMENT, JR., JJ., joined.

Joe R. Johnson, II, Springfield, Tennessee, for the appellant, A.I.B.

Paul G. Summers, Attorney General and Reporter, and Dianne Stamey Dycus, Deputy Attorney General, for the appellee, Tennessee Department of Children's Services.

**OPINION**

**I.**

A.I.B. is currently twenty-four years old and has been addicted to drugs ever since she was seven. She began smoking marijuana and later became addicted to cocaine, Xanax, Lortab, Soma, and Valium. In March 1998, when she was barely eighteen years old, A.I.B. gave birth to her first child, C.R.B. She soon became pregnant by another man, and in February 1999, less than one year after the birth of her first child, she gave birth to her second child, A.L.B.

A.I.B. realized that she was unable to care for her infant children and decided that it would be in their best interests to temporarily relinquish custody to someone else. In August 1999, she appeared in the Davidson County Juvenile Court and agreed to transfer the custody of her children to a family living in Springfield, Tennessee “while she attempt[ed] to stabilize her situation.” The record contains no evidence regarding any intervention either by the juvenile court or by the State to provide counseling or other supportive assistance to A.I.B. at that time. It also contains no evidence regarding A.I.B.’s relationship with either C.R.B. or A.L.B. for the next fifteen months.

On November 2, 2000, A.L.B., then approximately twenty-one months old, was discovered in the middle of a busy street. He had wandered off unattended after the daughter of the custodial family had fallen asleep. When a home visit revealed that both children were “filthy and hungry and possibly developmentally delayed,” the Tennessee Department of Children’s Services filed a petition for temporary custody in the Robertson County Juvenile Court, and the court placed the children in the Department’s custody.

At this point, the Department brought A.I.B. back into the picture. It was evident, however, that her circumstances had worsened since her appearance in the Davidson County Juvenile Court. She was still addicted to drugs and had been an accessory to an aggravated burglary. In October 2000, she had pleaded guilty to aggravated burglary, had been sentenced to the community corrections program, and had been placed on probation for five years. Even with this knowledge, the Department developed a “permanency plan” for both children designed to reunite them with A.I.B.

Despite the Department’s knowledge of A.I.B.’s chronic drug addiction and lack of family support, the Department’s December 1, 2000 plan established aggressive goals for A.I.B. For example, the plan gave her six months to (1) be alcohol and drug free, (2) obtain housing of her own, (3) be legally employed, (4) put the needs of her children first, (5) understand the developmental milestones of her children, (6) help her children learn to interact with other children, and (7) avoid breaking the law or violating her probation. The plan also gave A.I.B. seven months to (1) become a better parent and (2) be responsible for her children and see that their medical needs are met. In recognition of the Department’s statutory obligation to provide supportive services to A.I.B.,<sup>1</sup> the plan listed both the Department of Children’s Services and the Department of Human Services as parties responsible for helping A.I.B. accomplish these goals.

The last time that A.I.B. talked with a Department employee was in early 2001 when the employee gave her the name and telephone number of someone in Nashville who might have been able to help her set up the programs required by the permanency plan. A.I.B. visited with her children on approximately three occasions in early 2001 but lost contact with them in March 2001 when the Department placed them in a foster home in Clarksville. Other than mailing occasional letters to A.I.B. at her mother’s address which were returned, the Department made little effort to keep in contact with her or to provide any services to help address her drug addiction or improve her parenting skills. Eventually, the Department simply gave up on A.I.B.

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<sup>1</sup>Tenn. Code Ann. § 36-1-113(i)(2) (Supp. 2003) and Tenn. Code Ann. § 37-1-166(a) (2001).

On September 25, 2001, the Department filed petitions to terminate A.I.B.'s parental rights with regard to C.R.B. and A.L.B., as well as the parental rights of their respective fathers. These petitions sought termination on three grounds: (1) abandonment in violation of Tenn. Code Ann. § 36-1-102(1)(A)(i) and (iv),<sup>2</sup> (2) failure to remedy persistent conditions in violation of Tenn. Code Ann. § 36-1-113(g)(3)(A) (Supp. 2003), and (3) substantial non-compliance with the requirements of the permanency plan in violation of Tenn. Code Ann. § 36-1-113(g)(2). A.I.B.'s appointed lawyer filed an answer denying the Department's allegations.

The record reflects little regarding what transpired during the next year. It contains only sketchy information regarding the children, A.I.B.'s activities, or the Department's efforts to assist or support A.I.B. or her children. All that is known is that (1) A.I.B. gave birth to her third child in May 2002,<sup>3</sup> (2) she had been living with her children's godmother, (3) she had been working at a fast food restaurant and doing babysitting, (4) she had violated her probation for the second time when she was caught using drugs, and (5) she had been sent to prison for violating her probation. After A.I.B. was incarcerated, she began receiving treatment for her alcohol and drug abuse for the first time – at least as far as this record shows.

A.I.B. was still incarcerated when the juvenile court conducted the trial on October 30, 2002. She testified about the substance abuse programs she was participating in while incarcerated and explained that she had also enrolled in parenting classes. She also explained that upon release from custody the prison would place her in a halfway house and help her find employment. A.I.B. stated that she expected to be released in March or April 2003.

The juvenile court handed down its decision from the bench at the conclusion of the hearing. The court observed that A.I.B. had "severed the relationship between herself and these children a couple of years ago." While professing that it was "not insensitive" to A.I.B.'s chemical dependency, the court noted that "she's taken no step whatsoever voluntarily to address the issue" and discounted her efforts to rehabilitate herself while in prison.

Thereafter, on December 31, 2002, the juvenile court filed a "Final Decree of Guardianship" terminating A.I.B.'s parental rights, as well as the parental rights of the fathers of the two children. The order, prepared by the Department's lawyer, simply recited that A.I.B. had willfully abandoned her children pursuant to Tenn. Code Ann. § 36-1-113(g)(1), failed to remedy persistent conditions pursuant to Tenn. Code Ann. § 36-1-113(g)(3), and failed to comply substantially with the requirements of the permanency plan pursuant to Tenn. Code Ann. § 36-1-113(g)(2).

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<sup>2</sup>More properly, the Department should have pleaded a violation of Tenn. Code Ann. § 36-1-113(g)(1).

<sup>3</sup>The Department took custody of this child in September 2002 when A.I.B. was incarcerated. The record contains no information regarding the Department's intentions with regard to this child.

## II. THE JUVENILE COURT'S COMPLIANCE WITH TENN. CODE ANN. § 36-1-113(k)

Substantial questions exist concerning whether the Department established any of the statutory grounds for termination by clear and convincing evidence in light of A.I.B.'s chronic chemical dependency and the lack of evidence of significant efforts by the Department to provide her with supportive services to help her address her addiction.<sup>4</sup> However, we will not address these issues on this appeal because the December 30, 2002 order terminating A.I.B.'s parental rights is fundamentally flawed.<sup>5</sup> It does not comply with Tenn. Code Ann. § 36-1-113(k) which requires trial courts to prepare written findings of fact and conclusions of law in termination cases.

### A.

Termination proceedings involve fundamental, constitutionally protected rights and have a far-reaching and indelible impact on parents and children alike. The subject matter and consequences of the proceeding require individualized, in-depth consideration of each case, *In re Swanson*, 2 S.W.3d 180, 188 (Tenn. 1999), and a careful, reasoned application of the applicable legal principles to the evidence. The courts that hear the proof are in the best position to conduct the analysis because they are able to observe the witnesses when they testify and to make factual findings with regard to credibility and intent.<sup>6</sup>

Tenn. Code Ann. § 36-1-113(k) explicitly requires trial courts to “enter an order which makes specific findings of fact and conclusions of law” in termination cases. This statutory requirement reflects the Tennessee General Assembly’s recognition of the necessity of individualized decisions in these cases. It also reflects the legislature’s understanding that findings of fact and conclusions of law facilitate appellate review and promote the just and speedy resolution of appeals. *Bruce v. Bruce*, 801 S.W.2d 102, 104 (Tenn. Ct. App. 1990). Because of Tenn. Code Ann. § 36-1-113(k),

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<sup>4</sup> As far as this record shows, A.I.B. had only two conversations with her case manager between the date she signed the parenting plan in December 2000 and September 2001 when the Department filed the termination petition. In one conversation, the case manager gave A.I.B. the name and telephone number of a person who could provide her with parenting assistance. On another occasion, the case manager turned in A.I.B. to the Robertson County authorities for using drugs. A.I.B. did not receive meaningful assistance with her substance abuse problem until she was incarcerated in September 2002, and the record contains no evidence regarding whether this assistance has helped her address her addiction.

<sup>5</sup> While we customarily limit our consideration to the issues raised by the parties, Tenn. R. App. P. 13(b) permits us, on rare occasions, to consider issues that have not been raised by the parties in order to prevent injury to the public and prejudice to the judicial process. This case presents one of these rare occasions.

<sup>6</sup> We must defer to the trial court’s factual findings because it was the trial court, not this court, that saw the witnesses and had an opportunity to assess their credibility. *Richards v. Liberty Mut. Ins. Co.*, 70 S.W.3d 729, 732 (Tenn. 2002); *Oceanics Sch., Inc. v. Barbour*, 112 S.W.3d 135, 139-40 (Tenn. Ct. App. 2003); *Parks Props. v. Maury County*, 70 S.W.3d 735, 741 (Tenn. Ct. App. 2001).

trial courts cannot follow the customary practice of making oral findings from the bench and later adopting them by reference in their final order.<sup>7</sup>

The findings of fact and conclusions of law required by Tenn. Code Ann. § 36-1-113(k) must address the two necessary elements of every termination case. First, they must address whether one or more of the statutory grounds for termination have been established by clear and convincing evidence. Tenn. Code Ann. § 36-1-113(c)(1);<sup>8</sup> *Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002); *In re C.W.W.*, 37 S.W.3d 467, 473 (Tenn. Ct. App. 2000). Second, they must address whether terminating the parent's parental rights is in the child's best interests. Tenn. Code Ann. § 36-1-113(c)(2);<sup>9</sup> *In re A.W.*, 114 S.W.3d 541, 544 (Tenn. Ct. App. 2003); *In re M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). If a termination petition is predicated on more than one statutory ground, clear and convincing evidence establishing any single ground will support a termination order. *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002).

A trial court's failure to comply with Tenn. Code Ann. § 36-1-113(k) affects more than the standard of appellate review.<sup>10</sup> It affects the viability of the appeal. When a trial court fails to enter an order containing adequate findings of fact and conclusions of law with regard to all alleged grounds for termination, the Tennessee Supreme Court has instructed the appellate courts to remand the case to the trial court for the preparation of appropriate written findings of fact and conclusions of law. *In re D.L.B.*, \_\_\_ S.W.3d \_\_\_, \_\_\_, 2003 WL 22383609, at \*6 (Tenn. 2003).

## **B.**

The juvenile court's December 30, 2002 order does not comply with Tenn. Code Ann. § 36-1-113(k). It contains no specific findings of fact regarding any of the statutory grounds for terminating A.I.B.'s parental rights. As for conclusions of law, the order simply recites that A.I.B. had willfully abandoned her children pursuant to Tenn. Code Ann. § 36-1-113(g)(1), had failed to remedy persistent conditions pursuant to Tenn. Code Ann. § 36-1-113(g)(3), and had failed to comply substantially with the requirements of the permanency plan pursuant to Tenn. Code Ann. § 36-1-113(g)(2). Even more remarkably, the order does not recite that terminating A.I.B.'s parental rights is in the best interests of C.R.B. and A.L.B.

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<sup>7</sup>This court appears to have condoned the use of oral findings of fact and conclusions of law in a termination case in at least one unpublished memorandum opinion. We decline to cite or follow this opinion in light of Tenn. Ct. App. R. 10 which states that a memorandum opinion "shall not be cited or relied upon for any reason in any unrelated case."

<sup>8</sup>The statutory grounds for terminating parental rights are defined in Tenn. Code Ann. § 36-1-113(g).

<sup>9</sup>The factors to be considered in a "best interests" analysis are described in Tenn. Code Ann. § 36-1-113(i).

<sup>10</sup>When a trial court makes no findings of fact in an ordinary civil case, the appellate court simply reviews the record de novo without presuming that the trial court's findings of fact are correct and determines where the preponderance of the evidence lies. *Kendrick v. Shoemaker*, 90 S.W.3d 566, 570 (Tenn. 2002); *Ganzevoort v. Russell*, 949 S.W.2d 293, 296 (Tenn. 1997).

This court, like the Tennessee Supreme Court, does not condone unnecessary delays in the final resolution of proceedings to terminate parental rights. All parties affected by these proceedings have a right to a prompt and just adjudication of their rights and interests. However, the parties also have a reasonable and legally enforceable expectation that the Department and the courts will comply with the plain statutory requirements when they undertake to extinguish the relationship between a parent and his or her children. In this case, the juvenile court did not comply with Tenn. Code Ann. § 36-1-113(k), and we are left with no choice other than to remand the case with directions to make the required specific written findings of fact and conclusions of law.

### **III.**

We vacate the portion of the juvenile court's December 30, 2002 judgment terminating A.I.B.'s parental rights and remand the case to the trial court with directions to prepare specific written findings of fact and conclusions of law addressing each of the Department's three grounds for terminating A.I.B.'s parental rights and the best interests of C.R.B. and A.L.B. We tax the costs of this appeal to the Tennessee Department of Children's Services.

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WILLIAM C. KOCH, JR., P.J., M.S.